IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

Arbitration Application No.23 of 2005

R.R.Industries Applicant

Vs.

Union of India & ors. Respondents

Mr.Bishwajit Chakrabarty with Mr.Sarang Khanzode and i/b. Paras Kuhad & Associates for applicant.

Mr.Suresh Kumar for respondents.

CORAM: B.H.MARLAPALLE, J.

April 04, 2006.

P.C.

1. Pursuant to the order passed on 17th March 2006 Mr.Suresh Kumar, the learned counsel for the respondents has placed on record four names of the serving officers under the Central Railway and based at Mumbai. These names are:

(i) Shri C.A. Ambere, Deputy Chief Engineer (TM), Central Railway, Mumbai CST.

(ii) Ms.Ramaah Devijee, Deputy Financial Adviser and Chief Accounts Officer (C) MTP, Central Railway, Mumbai CST.

(iii) Shri N.D. Mishra, Deputy Chief Signal & Telecom Engineer (Connv.), Central Railway, Mumbai CST.

(iv) Shri R.K. Soni, Deputy Chief Material Manager (SM), Central Railway, Mumbai CST.

2. As against this Mr.Bishwajit Chakrabarty, the learned counsel for the applicant has suggested the name of Mr.S.N. Agrawal, Chief Track Engineer, Central Railway, Mumbai CST.

3. Clause 2900 of the agreement between the parties provides for arbitration. Sub-clause (c) thereunder states that no person other than the person appointed by the authority as set out in sub-clauses (a) and (b) should act as Arbitrator and that if for any reason that is not possible, the matter is not to be referred to Arbitration at all. As per sub-clause (a) the disputes or differences between the parties arising out of the contract shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the Arbitrator by the General Manager in the case of contracts entered into by the Zonal Railways and, therefore, in the instant

case Respondent No.2 has to appoint the sole arbitrator from amongst the Gazetted Railway Officers and there is no provision for appointment of a Retired Judge as the sole arbitrator.

4. In this application filed under Section 11 of the Arbitration and Conciliation Act, 1996 the applicant-firm has prayed for appointment of an independent arbitrator to adjudicate the claims / disputes of the applicant as set out in para 51 of the application. When his attention was invited to Clause No.2900 of the agreement between the parties and which relates to the arbitration proceedings, the learned counsel for the applicant submitted the list of two serving Railway Officers from Northern Railway and one officer from the Ministry of Railways. He also submitted the names of two retired Officers from the Indian Railways. As against this the learned counsel for the respondent submitted the list of four serving Officers from the Western Railways while opposing to the six names submitted by the applicant. This list of the officers from the Western Railways was opposed by the learned counsel for the applicant-firm. As a via media I had, therefore, directed the learned counsel for the respondents to

submit a list of serving Officers from the Central Railways and based at Mumbai so as to meet the convenience of both the parties and avoid appointing any officer from the Western Railway which, as per the learned counsel for the applicant, has blacklisted the applicant-firm. Respondent No.2 is the General Manager of the Western Railways and, therefore, in the normal course under Clause 2900 (a) of the agreement a serving Officer from the Western Railways was required to be appointed by the Respondent No.2 as a sole arbitrator on the approach made by the applicant-firm but the applicant-firm filed this application claiming that any officer appointed from the Western Railways may not conduct the arbitration proceedings free from any doubt of favouritism or partiality more so when the applicant has been blacklisted by the Western Railways.

5. Having regards to the claims raised by the applicant and for being referred to the arbitration. I hereby appoint Ms.Ramaah Devijee, Deputy Financial Adviser and Chief Accounts Officer (C) MTP, Central Railway, Mumbai CST as the Sole Arbitrator from amongst the list of the four names suggested by the respondents. The said Ms.Ramaah Devijee will

commence the arbitration proceedings as the sole arbitrator as expeditiously as possible and within a period of three weeks from today and both the parties shall appear before her on 25th April 2006 at 11 a.m. and finalise further terms of arbitration proceedings including time span etc. Needless to mention, she will be entitled to charge the fees for arbitration proceedings as per the schedule prescribed by the concerned Regional Railway or Railway Board for the serving officers.

6. The application is disposed off in terms of the above order.

7. A copy of this order be forwarded to Ms.Ramaah Devijee, Deputy Financial Adviser and Chief Accounts Officer (C) MTP, Central Railway, Mumbai CST.

(B.H.MARLAPALLE,J.)